

House Study Bill 199

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
NATURAL RESOURCES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to regulation of underground storage tanks by the
2 department of natural resources, making appropriations, and
3 providing contingent effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1404DP 82
6 tm/es/88

PAG LIN

1 1 Section 1. Section 455B.474, subsection 1, paragraph b,
1 2 Code 2007, is amended to read as follows:
1 3 b. Maintaining records of any monitoring or leak detection
1 4 system, inventory control system, ~~or~~ tank testing or
1 5 comparable system, and periodic underground storage tank
1 6 facility compliance inspections conducted by inspectors
1 7 certified by the department.

1 8 Sec. 2. Section 455B.474, subsection 1, Code 2007, is
1 9 amended by adding the following new paragraph:

1 10 NEW PARAGRAPH. i. Establishing a certified compliance
1 11 inspector program administered by the department for
1 12 underground storage tank facility compliance inspections.

1 13 (1) The certified compliance inspector program shall
1 14 provide for, but not be limited to, all of the following:

1 15 (a) Mandatory periodic underground storage tank facility
1 16 compliance inspections by owners and operators using
1 17 inspectors certified by the department.

1 18 (b) Compliance inspector qualifications, certification
1 19 procedures, certification and renewal fees sufficient to cover
1 20 administrative costs, continuing education requirements,
1 21 inspector discipline standards including certification
1 22 suspension and revocation for good cause, compliance
1 23 inspection standards, professional liability bonding or
1 24 insurance requirements, and any other requirements as the
1 25 commission may deem appropriate. Certification and renewal
1 26 fees received by the department are appropriated to the
1 27 department for purposes of the administration of the certified
1 28 compliance inspector program.

1 29 (2) The department shall continue to conduct independent
1 30 inspections as provided in section 455B.475 as deemed
1 31 appropriate to assure effective compliance and enforcement and
1 32 for the purpose of auditing the accuracy and completeness of
1 33 inspections conducted by certified compliance inspectors.

1 34 (3) Acts or omissions by a certified compliance inspector,
1 35 the state, or the department regarding certification, renewal,
2 1 oversight of the certification process, continuing education,
2 2 discipline, inspection standards, or any other actions, rules,
2 3 or regulations arising out of the certification, inspections,
2 4 or duties imposed by this section shall not be cause for a
2 5 claim against the state or the department within the meaning
2 6 of chapter 669 or any other provision of the Iowa Code.

2 7 Sec. 3. Section 455B.474, subsection 1, paragraph d,
2 8 subparagraph (2), subparagraph division (e), Code 2007, is
2 9 amended to read as follows:

2 10 (e) A site cleanup report which classifies a site as
2 11 either high risk, low risk, or no action required shall be
2 12 submitted by a groundwater professional to the department with
2 13 a certification that the report complies with the provisions
2 14 of this chapter and rules adopted by the department. The
2 15 report shall be determinative of the appropriate
2 16 classification of the site. However, if the report is found
2 17 to be inaccurate or incomplete, and if based upon information
2 18 in the report the risk classification of the site cannot be

2 19 reasonably determined by the department based upon industry
2 20 standards, the department shall work with the groundwater
2 21 professional to obtain the additional information necessary to
2 22 appropriately classify the site. A groundwater professional
2 23 who knowingly or intentionally makes a false statement or
2 24 misrepresentation which results in a mistaken classification
2 25 of a site shall be guilty of a serious misdemeanor and shall
2 26 have the groundwater professional's certification revoked
2 27 under this section ~~455G.18~~.

2 28 Sec. 4. Section 455B.474, subsection 1, paragraph f,
2 29 subparagraph (5), Code 2007, is amended to read as follows:

2 30 (5) A corrective action design report submitted by a
2 31 groundwater professional shall be accepted by the department
2 32 and shall be primarily relied upon by the department to
2 33 determine the corrective action response requirements of the
2 34 site. However, if the corrective action design report is
2 35 found to be inaccurate or incomplete, and if based upon
3 1 information in the report the appropriate corrective action
3 2 response cannot be reasonably determined by the department
3 3 based upon industry standards, the department shall work with
3 4 the groundwater professional to obtain the additional
3 5 information necessary to appropriately determine the
3 6 corrective action response requirements. A groundwater
3 7 professional who knowingly or intentionally makes a false
3 8 statement or misrepresentation which results in an improper or
3 9 incorrect corrective action response shall be guilty of a
3 10 serious misdemeanor and shall have the groundwater
3 11 professional's certification revoked under this section
3 12 ~~455G.18~~.

3 13 Sec. 5. Section 455B.474, Code 2007, is amended by adding
3 14 the following new subsections:

3 15 NEW SUBSECTION. 8. Requirements as may be necessary to
3 16 maintain state program approval and which are consistent with
3 17 applicable provisions of the federal Energy Policy Act of
3 18 2005, Pub. L. No. 109=58, Title XV, Subtitle B, Underground
3 19 Storage Tank Compliance, as codified in 42 U.S.C. } 6991 et
3 20 seq.

3 21 a. The commission shall adopt rules establishing a
3 22 training program applicable to owners and operators of
3 23 underground storage tanks. The rules may include provisions
3 24 for department certification of operators, self-certification
3 25 by owners and operators, education and training requirements,
3 26 owner requirements to assure operator qualifications, and
3 27 assessment of education, training, and certification fees.
3 28 The rules shall be consistent with and sufficient to comply
3 29 with the operator training requirements as provided in 42
3 30 U.S.C. 6991i, guidance adopted pursuant to that provision by
3 31 the administrator of the United States environmental
3 32 protection agency, and state program approval requirements
3 33 under 42 U.S.C. 6991i(b).

3 34 b. The commission shall adopt rules consistent with and
3 35 sufficient to comply with the provisions of 42 U.S.C. 6991k,
4 1 guidance adopted by the administrator of the United States
4 2 Environmental Protection Agency pursuant to that provision,
4 3 and state program approval requirements under 42 U.S.C.
4 4 6991k(a)(3).

4 5 c. The commission shall adopt rules applicable to
4 6 secondary containment requirements consistent with and
4 7 sufficient to comply with the provisions of Pub. L. 109=58,
4 8 Title XV, section 1530(a), as codified at 42 U.S.C.
4 9 6991b(i)(1), and guidance adopted by the administrator of the
4 10 United States environmental protection agency pursuant to that
4 11 provision. Rules adopted under this paragraph shall not amend
4 12 or modify the secondary containment requirements in subsection
4 13 1, paragraph "f", subparagraph (9).

4 14 NEW SUBSECTION. 9. a. Groundwater professionals shall be
4 15 certified. The commission shall adopt rules pursuant to
4 16 chapter 17A for such certifications, and the rules shall
4 17 include provisions for certification suspension or revocation
4 18 for good cause.

4 19 b. A groundwater professional is a person who provides
4 20 subsurface soil contamination and groundwater consulting
4 21 services or who contracts to perform remediation or corrective
4 22 action services and is one or more of the following:

4 23 (1) A person certified by the American institute of
4 24 hydrology, the national water well association, the American
4 25 board of industrial hygiene, or the association of groundwater
4 26 scientists and engineers.

4 27 (2) A professional engineer licensed in Iowa.

4 28 (3) A professional geologist certified by a national
4 29 organization.

4 30 (4) Any person who has five years of direct and related
4 31 experience and training as a groundwater professional or in
4 32 the field of earth sciences.

4 33 (5) Any other person with a license, certification, or
4 34 registration to practice hydrogeology or groundwater hydrology
4 35 issued by any state in the United States or by any national
5 1 organization, provided that the license, certification, or
5 2 registration process requires, at a minimum, all of the
5 3 following:

5 4 (a) Possession of a bachelor's degree from an accredited
5 5 college.

5 6 (b) Five years of related professional experience.

5 7 c. The department of natural resources may provide for a
5 8 civil penalty of no more than fifty dollars for failure to
5 9 obtain certification. An interested person may obtain a list
5 10 of certified groundwater professionals from the department of
5 11 natural resources. The department may impose and retain a fee
5 12 for the certification of persons under this subsection
5 13 sufficient to cover the costs of administration.

5 14 d. The certification of groundwater professionals shall
5 15 not impose liability on the board, the department, or the fund
5 16 for any claim or cause of action of any nature, based on the
5 17 action or inaction of a groundwater professional certified
5 18 pursuant to this subsection.

5 19 e. A person who requests certification under this
5 20 subsection shall be required to attend a course of instruction
5 21 and pass a certification examination. An applicant who
5 22 successfully passes the examination shall be certified as a
5 23 groundwater professional.

5 24 f. All groundwater professionals shall be required to
5 25 complete continuing education requirements as adopted by rule
5 26 by the commission.

5 27 g. The commission may provide for exemption from the
5 28 certification requirements of this subsection and rules
5 29 adopted hereunder for a professional engineer licensed
5 30 pursuant to chapter 542B, if the person is qualified in the
5 31 field of geotechnical, hydrological, environmental
5 32 groundwater, or hydrogeological engineering.

5 33 h. Notwithstanding the certification requirements of this
5 34 subsection, a site cleanup report or corrective action design
5 35 report submitted by a certified groundwater professional shall
6 1 be accepted by the department in accordance with subsection 1,
6 2 paragraph "d", subparagraph (2), subparagraph subdivision (e),
6 3 and paragraph "f", subparagraph (5).

6 4 NEW SUBSECTION. 10. Requirements that persons and
6 5 companies performing or providing services for underground
6 6 storage tank installations, installation inspections, testing,
6 7 and permanent closures be certified by the department. This
6 8 provision does not apply to persons performing services in
6 9 their official capacity and as authorized by the state fire
6 10 marshal's office or fire departments of political subdivisions
6 11 of the state. The rules adopted by the commission shall
6 12 include all of the following:

6 13 a. Establishing separate certification criteria applicable
6 14 to underground storage tank installers and installation
6 15 inspectors, underground storage tank testers, and persons
6 16 conducting underground storage tank closure activities as
6 17 required by commission rules.

6 18 b. Establishing minimum qualifications for certification
6 19 including but not limited to considerations based on
6 20 education, character, professional ethics, experience,
6 21 manufacturer or other private agency certification, training
6 22 and apprenticeship, and field demonstration of competence.
6 23 The rules may provide for exemption from education,
6 24 experience, and training requirements for a licensed engineer
6 25 for whom underground storage tank installation is within the
6 26 scope of their license and practice but shall require
6 27 compliance with other certification requirements.

6 28 c. Requiring a written examination developed and
6 29 administered by the department or by some other qualified
6 30 public or private entity identified by the department. The
6 31 department may contract with a public or private entity to
6 32 administer the department's examination or a department
6 33 approved third party examination. The examination shall, at a
6 34 minimum, be sufficient to establish knowledge of all
6 35 applicable underground storage tank rules adopted under this
7 1 section, private industry standards, federal standards, and
7 2 other applicable standards adopted by the Iowa fire marshal's
7 3 office pursuant to chapter 101.

7 4 d. Providing for a minimum two-year renewable
7 5 certification period. A person may apply for a combined

7 6 certificate applicable to underground storage tank installer
7 7 and installer inspector certification, tester certification,
7 8 and closure certification.

7 9 e. Providing that certificate holders obtain and provide
7 10 proof of financial responsibility for environmental liability
7 11 with minimum liability limits of one million dollars per
7 12 occurrence and in the aggregate. The rules may provide
7 13 exemptions where the certificate holder is employed by the
7 14 owner or operator of the underground storage tank system and
7 15 the underground storage tank system is covered by a financial
7 16 responsibility mechanism under subsection 2.

7 17 f. Providing criteria for the department to take
7 18 disciplinary action including issuance of warnings,
7 19 reprimands, suspension and probation, and revocation. Any
7 20 certificate holder subject to suspension or revocation shall
7 21 be entitled to notice and an opportunity for an evidentiary
7 22 hearing as provided in section 17A.18.

7 23 g. Providing for certification reciprocity between states
7 24 upon demonstration that the out of state certification
7 25 criteria is substantially equivalent to rules adopted by the
7 26 commission.

7 27 h. Providing for assessment of fees sufficient to cover
7 28 the costs of administration of the certification program. A
7 29 separate fee may be established for persons applying for a
7 30 combination of installer and installer inspector, testing, or
7 31 closure certifications. Fees received by the department
7 32 pursuant to this subsection are appropriated to the department
7 33 for purposes of the administration of activities under this
7 34 subsection.

7 35 i. Notwithstanding subsection 7, the commission may adopt
8 1 rules requiring that all underground storage tank
8 2 installations, installation inspections, testing, and closure
8 3 activities be conducted by persons certified in accordance
8 4 with this subsection.

8 5 j. Acts or omissions of a person certified under this
8 6 subsection, the state, or the department regarding
8 7 certification, renewal, oversight of the certification
8 8 process, continuing education, discipline, inspection
8 9 standards, or any other actions including department onsite
8 10 supervision of certified activities, rules, or regulations
8 11 arising out of the certification, shall not be cause for a
8 12 claim against the state or the department within the meaning
8 13 of chapter 669 or any other provision of the Code.

8 14 Sec. 6. Section 455H.105, subsection 5, Code 2007, is
8 15 amended to read as follows:

8 16 5. Adopt rules establishing requirements for the
8 17 submission, performance, and verification of site assessments,
8 18 cleanup plans, and certifications of completion. The rules
8 19 shall provide that all site assessments, cleanup plans, and
8 20 certifications of completion submitted by a participant shall
8 21 be prepared by or under the supervision of an appropriately
8 22 trained professional, including a groundwater professional
8 23 certified pursuant to section ~~455G.18~~ 455B.474.

8 24 Sec. 7. TRANSITIONAL PROVISIONS.

8 25 1. Not later than August 1, 2007, the environmental
8 26 protection commission shall adopt administrative rules
8 27 previously adopted by the Iowa comprehensive petroleum
8 28 underground storage tank fund board pursuant to section
8 29 455G.17 in existence on the effective date of this Act by
8 30 emergency rulemaking pursuant to section 17A.4, subsection 2,
8 31 and section 17A.5, subsection 2, paragraph "b". The rules
8 32 shall become effective immediately upon filing or on a later
8 33 effective date specified in the rules. Any rules adopted in
8 34 accordance with the provisions of this section shall also be
8 35 published as notice of intended action as provided in section
9 1 17A.4.

9 2 2. Following the adoption of emergency rules, the
9 3 commission shall commence rulemaking procedures for the
9 4 administration of section 455B.474, subsection 10.

9 5 3. Any registration or certification issued pursuant to
9 6 section 455G.17 shall continue in full force and effect until
9 7 expiration or renewal.

9 8 Sec. 8. Section 455G.17, Code 2007, is repealed.

9 9 Sec. 9. Section 455G.18, Code 2007, is repealed.

9 10 Sec. 10. CONTINGENT EFFECTIVE DATE. The section of this
9 11 Act repealing section 455G.17, shall take effect upon the Code
9 12 editor's receipt of notice from the environmental protection
9 13 commission stating that emergency rules required under the
9 14 section of this Act relating to transitional provisions have
9 15 taken effect.

9 16 EXPLANATION

9 17 This bill relates to the regulation of underground storage
9 18 tanks by the department of natural resources.

9 19 The bill requires the maintaining of records by owners and
9 20 operators of underground storage tanks for periodic
9 21 underground storage tank facility compliance inspections
9 22 conducted by inspectors certified by the department.

9 23 The bill requires the department to administer a certified
9 24 compliance inspector program for underground storage tank
9 25 facility compliance inspections. The bill provides that the
9 26 program shall include mandatory periodic underground storage
9 27 tank facility compliance inspections by owners and operators
9 28 using inspectors certified by the department. The bill
9 29 requires the department to continue to conduct independent
9 30 inspections as deemed appropriate. The bill appropriates
9 31 moneys received by the department for certification and
9 32 renewal fees for purposes of the administration of the
9 33 certified compliance inspector program. The bill provides
9 34 that acts or omissions of the certified compliance inspectors,
9 35 the state, or the department regarding certification, renewal,
10 1 oversight of the certification process, continuing education,
10 2 discipline, inspection standards, or any other actions, rules,
10 3 or regulations arising out of the certification, inspections,
10 4 or duties imposed by these provisions shall not be cause for a
10 5 claim against the state or the department.

10 6 The bill requires the environmental protection commission
10 7 to adopt rules for requirements as may be necessary to
10 8 maintain state program approval and which are consistent with
10 9 applicable provisions of the federal Energy Policy Act of
10 10 2005, Pub. L. No. 109-58, Title XV, Subtitle B, Underground
10 11 Storage Tank Compliance, as codified in 42 U.S.C. 6991 et seq.
10 12 The bill provides that the commission shall adopt rules
10 13 establishing a training program applicable to owners and
10 14 operators of underground storage tanks. The bill provides
10 15 that the rules may include provisions for department
10 16 certification of operators, self-certification by owners and
10 17 operators, education and training requirements, owner
10 18 requirements to assure operator qualifications, and assessment
10 19 of education, training, and certification fees. The bill
10 20 requires the rules to be consistent with and sufficient to
10 21 comply with certain federal requirements.

10 22 The bill repeals Code section 455G.17 relating to
10 23 certification of different classes of persons as underground
10 24 storage tank installation inspectors. The repeal takes effect
10 25 upon the Code editor's receipt of notice from the
10 26 environmental protection commission stating that emergency
10 27 rules required under this bill have taken effect.

10 28 The bill repeals Code section 455G.18 relating to the
10 29 certification of groundwater professionals and moves
10 30 substantially the same provisions to Code chapter 455B. The
10 31 bill removes a requirement that certification courses and
10 32 examinations be held by the administrator of the Iowa
10 33 comprehensive petroleum underground storage tank fund and
10 34 removes other outdated provisions. The bill makes conforming
10 35 amendments.

11 1 The bill requires that persons and companies performing or
11 2 providing services for underground storage tank installations,
11 3 installation inspections, testing, and permanent closures be
11 4 certified by the department. The bill provides that the rules
11 5 shall include establishing separate certification criteria
11 6 applicable to underground storage tank installers and
11 7 installation inspectors, underground storage tank testers, and
11 8 persons conducting underground storage tank closure
11 9 activities, establishing minimum qualifications for
11 10 certification, requiring a written examination developed and
11 11 administered by the department or by some other qualified
11 12 public or private entity identified by the department,
11 13 providing for a minimum two-year renewable certification
11 14 period, allowing a person to apply for a combined certificate,
11 15 providing that certificate holders obtain and provide proof of
11 16 financial responsibility for environmental liability with
11 17 minimum liability limits of \$1 million per occurrence and in
11 18 the aggregate, providing criteria for the department to take
11 19 disciplinary action against certificate holders, and providing
11 20 for certification reciprocity between states, providing for
11 21 assessment of fees sufficient to cover the costs of
11 22 administration of the certification program. The bill that
11 23 fees received by the department are appropriated to the
11 24 department for purposes of the administration of these
11 25 provisions. The bill allows the adoption of rules requiring
11 26 that all underground storage tank installations, installation
11 27 inspectors, testing, and closure activities be conducted by

11 28 persons certified pursuant to these provisions. The bill
11 29 provides that acts or omissions of certified persons, the
11 30 state, or the department regarding certification, renewal,
11 31 oversight of the certification process, continuing education,
11 32 discipline, inspection standards, or any other actions
11 33 including department onsite supervision of certified
11 34 activities, rules, or regulations arising out of the
11 35 certification, shall not be cause for a claim against the
12 1 state or the department.

12 2 The bill provides that, not later than August 1, 2007, the
12 3 environmental protection commission shall adopt administrative
12 4 rules previously adopted by the Iowa comprehensive petroleum
12 5 underground storage tank fund board pursuant to Code section
12 6 455G.17 in existence on the effective date of this Act by
12 7 emergency rulemaking. The bill provides that, following the
12 8 adoption of emergency rules, the commission shall commence
12 9 rulemaking procedures for the administration of Code section
12 10 455B.474, subsection 10. The bill provides that any
12 11 registration or certification issued pursuant to Code section
12 12 455G.17 shall continue in full force and effect until
12 13 expiration or renewal.

12 14 LSB 1404DP 82

12 15 tm:nh/es/88.1